

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9 VAC 5-40. Existing Stationary Sources (amending 9 VAC 5-40-5600, 9 VAC 5-40-5610, 9 VAC 5-40-5620, 9 VAC 5-40-5630, 9 VAC 5-40-5631, and 9 VAC 5-40-5641).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act (Sections 110, 111, 123, 129, 171, 172 and 182); 40 CFR Parts 51 and 60.

Effective Date: [insert effective date]

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Summary:

~~[The proposed amendments provide for the control of open burning and use of special incineration devices and specify the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The proposed amendments permit open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste, and demolition waste but provides for a seasonal restriction during June, July, and August in the Northern Virginia, Richmond, and Hampton Roads volatile organic compound (VOC) emissions control areas. The proposed amendments also provide a model local ordinance for cities and counties that wish to adopt their own legally enforceable mechanisms to control burning in lieu of relying on the state's regulatory program.~~

~~Modifications have also been made to ensure the regulation is consistent with existing incinerator regulations of the board and waste management regulations.~~

The regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a seasonal restriction during June, July and August in the Northern Virginia, Richmond and Hampton Roads volatile organic compound (VOC) emissions control areas. It also provides a model local ordinance for cities and counties that wish to adopt their own legally enforceable mechanisms to control burning in lieu of relying on the state's regulatory program.

The regulation is being modified to extend the seasonal restriction to all VOC emissions control areas and expand the seasonal restriction in those areas from June, July and August to include May and September. Year round restrictions have been placed on open burning or use of special incineration devices such that disposal is limited to clean burning waste and debris waste. Modifications have also been made to ensure the regulation is consistent with existing incinerator regulations of the Board and waste management regulations.]

### **9 VAC 5-40-5600. Applicability.**

A. Except as provided in ~~subsection~~ *subsections C and D* of this section, the provisions of this article apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or

town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

*D. The provisions of this article do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9 VAC 5-40-6250 et seq.), 46 (9 VAC 5-40-6550 et seq.), or 54 (9 VAC 5-40-7950 et seq.) of 9 VAC 5 Chapter 40 or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.*

**9 VAC 5-40-5610. Definitions.**

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 [(9 VAC 5-10-10 et seq.)], unless otherwise required by context.

C. Terms defined:

*"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.*

"Automobile graveyard" means any lot or place ~~which~~ *that* is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and ~~which~~ *that* it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste ~~which does not produce emissions of greater than 40% opacity when burned and which~~ *that is not prohibited to be burned under this article and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.*

"Clean lumber" means *wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.*

"Clean wood" means ~~untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.]~~

"Commercial waste" means all *solid* waste generated by establishments engaged in business operations *other than manufacturing or construction*. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste ~~which~~ *that* is produced or generated during construction ~~of structures, remodeling, or repair of pavements, houses, commercial buildings and other structures.~~ Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means ~~stumps, wood, brush, and leaves from land clearing operations~~ *wastes resulting from land-clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.*

"Demolition waste" means that solid waste ~~which~~ *that* is produced by the destruction of structures [ ~~and or~~ and or their foundations, or both,] and includes the same materials as construction waste.

"Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living~~ *readily putrescible discarded materials composed of animal, vegetable or other organic matter.*

"Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:~~ *a "hazardous waste" as described in 9 VAC 20-60, Hazardous Waste Management Regulations.*

- a. ~~Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~

~~b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.~~

~~"Household refuse waste" means waste material and trash normally accumulated by a household in the course of ordinary day-to-day living any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.~~

~~"Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~

~~"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.~~

"Junkyard" means an establishment or place of business ~~which~~ *that* is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary ~~[fills-~~landfills].

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Opening burning" means ~~the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney~~ *combustion of solid waste without:*

- a. Control of combustion air to maintain adequate temperature for efficient combustion;*
- b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and*
- c. Control of the combustion products' emission.*

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain ~~destructors~~ *incinerators* and over draft incinerators.

"Refuse" means ~~trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations~~ *all solid waste*

*products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.*

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste ~~which~~ *that* is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, [construction, demolition, or debris waste] and nonhazardous industrial solid waste. See Part I (9 VAC 20-80-10 et seq.) of 9 VAC 20 Chapter 80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means a *an open* pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

*"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:*

1. *Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.*
2. *Construction, renovation, or demolition wastes.*
3. *Clean lumber.*

*"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.*

**[9 VAC 5-40-5620. Open burning prohibitions.**

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9 VAC 5-40-5630.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for ~~disposal~~ the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for ~~disposal~~ the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the ~~disposal~~ destruction of commercial/industrial waste.

~~E. Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.~~

~~F. With regard to the provisions of subsection E of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No disposal of waste by open burning or transportation of waste to be disposed of by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.~~

~~G. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9 VAC 5-70-10 et seq.) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.]~~

**9 VAC 5-40-5630. Permissible open burning.**

[A.] Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through [G E] of 9 VAC 5-40-5620 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for

the elimination of a hazard ~~which~~ *that* constitutes a threat to the public health, safety or welfare and ~~which~~ *that* cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

- a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. *Hazardous waste permits may be required under the provisions of 9 VAC 20-60.*
- b. [~~Disposal~~ Destruction] of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. *Solid waste management permits may be required under the provisions of 9 VAC 20-80.*
- c. [~~Disposal~~ On site destruction] *of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order (i) to suppress, control, or eradicate an infestation or pest; (ii) to prevent or retard the spread of an infestation or pest; or (iii) to prevent further disease transmission or progression.*

2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement. *Buildings that have not been demolished may be burned under the provisions of this subdivision only.*

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.
4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9 VAC 5-40-5620 are not burned.
5. In urban areas, open burning is permitted for the [~~disposal~~ on site destruction] of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the [~~disposal~~ on site destruction] of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.
6. Open burning is permitted for the [~~disposal~~ on site destruction] of household ~~refuse waste~~ by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.
7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9 VAC 5-40-160 et seq.) of this chapter and Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50. Permits issued under 9 VAC 5 Chapter 80 [(9 VAC 5-80-10 et seq.)] may be used to satisfy the requirement for written approval. *This activity must be consistent with the provisions of 9 VAC 20-60.*

8. Open burning or the use of special incineration devices is permitted [on site] for [~~disposal~~ the destruction] of clean burning ~~construction waste, and debris waste, and demolition waste~~ [resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations].

~~Buildings which have not been demolished may be burned only as provided in subdivision 2 of this section. Open burning or the use of special incineration devices for the purpose of such~~ [~~disposal~~ destruction] is prohibited in the ~~Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206) during June, July, and August. As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas~~ *volatile organic compounds emissions control areas* (see 9 VAC 5-20-206) during *May, June, July, and August, and September.*

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9 VAC 5-40-5631), provided the following conditions are met:

- a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.
- b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for [~~disposal~~ the destruction] of clean burning ~~construction waste, and debris waste, and demolition waste~~ on the site of local landfills provided that the burning does not take place on land that has been

filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning *or the use of special incineration devices* for the purpose of such ~~[disposal~~ destruction] is prohibited in the ~~Northern Virginia Volatile Organic Compounds Emissions Control Area (see 9 VAC 5-20-206)~~ during June, July, and August. ~~As of January 1, 2000, open burning for the purpose of such disposal is prohibited in the Richmond and Hampton Roads Volatile Organic Compounds Emissions Control Areas~~ *volatile organic compounds emissions control areas* (see 9 VAC 5-20-206) during ~~May, June, July, and August, and September.~~

[B. Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.]

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.]

**9 VAC 5-40-5631. Forest management and agricultural practices.**

A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through ~~[G~~ E] of 9 VAC 5-40-5620 are met.

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

1. To reduce forest fuels and minimize the effect of wild fires.
2. To control undesirable growth of hardwoods.
3. To control disease in pine seedlings.
4. To prepare forest land for planting or seeding.
5. To create a favorable habitat for certain species.
6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:

1. To destroy undesirable *or diseased* vegetation.
2. To clear orchards and orchard prunings.
3. To destroy [empty] fertilizer and chemical containers.
4. To denature seed and grain ~~which~~ *that* may no longer be suitable for agricultural purposes.
5. To prevent loss from frost or freeze damage.
6. To create a favorable habitat for certain species.
7. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

**9 VAC 5-40-5641. Local ordinances on open burning.**

A. General.

1. If the governing body of any locality wishes to adopt an ordinance [relating to air pollution and] governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).
2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.
3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.
4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.
5. Local ordinances ~~which~~ *that* have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning ~~which~~ *that* differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in

subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

- a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
  - b. Adequate local resources will be committed to enforcing the proposed local ordinance.
  - c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.
  - d. If a waiver from any provision of Article 40 (9 VAC 5-40-5600 et seq.) of 9 VAC 5 Chapter 40 has been requested under [~~9 VAC 5-40-5640~~ 9 VAC 5-40-5645], the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.
2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.
  3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.
  4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances ~~which~~ *that* have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.
  5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:
    - a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board.

The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. [~~9 VAC 5-20-60~~ 9 VAC 5-170-150] shall not apply to local ordinances concerned solely with open burning.

C. Model Ordinance.

ORDINANCE NO. (000)

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place ~~which~~ *that* is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and ~~which~~ *that* it would not be economically practical to make operative, are placed, located or found.

B. "Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

~~B.~~ C. "Clean burning waste" means waste ~~which does not produce dense smoke when burned~~ and *that* is not prohibited to be burned under this ordinance *and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.*

D. "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

E. "Clean wood" means [untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include: (i) yard waste, or (ii) construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.]

~~C. F.~~ "Construction waste" means solid waste ~~which~~ *that* is produced or generated during construction ~~of structures, remodeling, or repair of pavements, houses, commercial buildings and other structures.~~ Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

~~D. G.~~ "Debris waste" means ~~stumps, wood, brush, and leaves from land clearing operations~~ *wastes resulting from land-clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.*

~~E. H.~~ "Demolition waste" means that solid waste ~~which~~ *that* is produced by the destruction of structures [~~and~~ or their foundations, or both,] and their foundations and includes the same materials as construction waste.

~~F. I.~~ "Garbage" means ~~rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living~~ *readily putrescible discarded materials composed of animal, vegetable or other organic matter.*

~~G. J.~~ "Hazardous waste" means ~~refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:~~ *a "hazardous waste" as described in 9 VAC 20-60, Hazardous Waste Management Regulations.*

~~1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~

~~2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed~~

~~H. K. "Household refuse waste" means waste material and trash normally accumulated by a household in the course of ordinary day to day living any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.~~

~~I. L. "Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.~~

~~J. M. "Junkyard" means an establishment or place of business ~~which~~ that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary [fills landfills].~~

~~K.~~ N. "Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Solid Waste Management Regulations [(9 VAC 20-80-10 ~~et seq.~~)] for further definitions of these terms.

~~L.~~ O. "Local landfill" means any landfill located within the jurisdiction of a local government.

~~M.~~ P. "Open burning" means the ~~burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney~~ *combustion of solid waste without:*

- a. Control of combustion air to maintain adequate temperature for efficient combustion;*
- b. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and*
- c. Control of the combustion products' emission.*

~~N.~~ Q. "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain ~~destructors~~ *incinerators* and over draft incinerators.

~~O.~~ R. "Refuse" means ~~trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations~~ *all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean-up of spills or contamination or other discarded materials.*

~~P.~~ S. "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

~~Q.~~ T. "Sanitary landfill" means an engineered land burial facility for the disposal of household waste ~~which~~ *that* is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, [construction, demolition, or debris waste] and nonhazardous industrial solid waste. See Solid Waste Management Regulations (9 VAC 20-80-40 ~~et seq.~~) for further definitions of these terms.

~~R.~~ U. "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

~~S.~~ V. "Special incineration device" means ~~a~~ *an open* pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

*W. "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:*

- 1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.*

2. *Construction, renovation, or demolition wastes.*

3. *Clean lumber.*

X. *"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.*

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for [~~disposal~~ the destruction] of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for [~~disposal~~ the destruction] of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for [~~disposal~~ the destruction] of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the [~~disposal~~ destruction] of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries ~~which~~ *that* may result from such conduct; nor does it excuse or

exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 [(9 VAC 5-70-40 et seq.)] or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

- A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;
- B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;
- C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted [on site] for the [~~disposal~~ destruction] of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)
2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and)
3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road<sup>1</sup>.

B. Open burning is permitted for the disposal of household ~~refuse~~ *waste* by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;
2. Animal carcasses or animal wastes are not burned;
3. Garbage is not burned; (and)

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<sup>1</sup> This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road<sup>2</sup>.

C. Open burning is permitted [on site] for [~~disposal~~ destruction] of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations ~~which~~ *that* may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for [~~disposal~~ destruction] of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill ~~which~~ *that* meets the provisions of the regulations of the Virginia Waste Management Board,

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning ~~construction~~ waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

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<sup>2</sup> This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

(E. (Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during [~~May, June, July, or August,~~ or September].<sup>3</sup>)

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions ~~which~~ *that* are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met ~~which~~ *that* are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

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<sup>3</sup> This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.
2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.
3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.
4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.
5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.
6. The use of special incineration devices shall be allowed only for the ~~disposal~~ destruction of debris waste, clean burning construction waste, and clean burning demolition waste.

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$----.<sup>4</sup>)

Section (000-8). Penalties for violation.

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jurisdictions outside these areas.

<sup>4</sup> The fee stipulation in this section is optional at the discretion of the jurisdiction.

- A. Any violation of this ordinance is punishable as a Class I misdemeanor. (See § 15.1-901 of the Code of Virginia.)
  
- B. Each separate incident may be considered a new violation.

CERTIFICATION

REGULATION 9 VAC 5 CHAPTER 40, REVISION H03  
CONCERNING  
OPEN BURNING

I certify that this regulation is full, true, and correctly dated.

Signature: \_\_\_\_\_

Name of Certifying Official: David K. Paylor

Title: Director

Agency: Department of Environmental Quality

Date: \_\_\_\_\_